

Chapter 17

FIRE PREVENTION AND CONTROL*

- Art. 1. In General, §§ 17-1 – 17-15
- Art. II. Fire Prevention Code §§ 17-16 – 17-37
- Art. III. Fireworks, §§ 17-38 – 17-46

ARTICLE I. IN GENERAL

Sec. 17-1 – 17-15 Reserved.

ARTICLE II. FIRE PREVENTION CODE

Sec. 17-16. Adoption of Fire Prevention Code.

That certain document, three (3) copies of which are on file in the office of the city clerk, being marked and designed as “The BOCA National Fire Prevention Code, Eighth Edition, 1990,” as published by the Building Officials and Code Administrators International, Inc., be and is hereby adopted as the fire prevention code of the city for the control of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said BOCA national Fire Prevention code are hereby referred to, adopted and made a part hereof as if fully set out in this article with the additions, insertions, deletions and changes, if any, prescribed in section 17-22, (Ord. No. 624-89, § 1, 4-24-89; Ord of 8-27-90, §§ 1, 2)

Charter reference-Authority to adopt technical codes by reference, § 5.7.

Cross reference- Adoption of Fire Prevention Code for purpose of regulating dry cleaning plants, § 14.5.1.

State law reference-Authority to adopt technical codes by reference, MCL § 117.3(K), MSA § 5.2073(K)

Charter references-Director of public safety, § 3.32 et seq.; chief of fire department, § 3.36

Cross references- Department of public safety, § 2-44 et seq.; buildings and building regulations, Ch. 11; open fires at Jean Klock Park, § 28-27; water supply for fire protection service, § 44-23; use of hydrants, § 44-34 et seq, smoking on public buses prohibited, § 46-1; smoking prohibited on taxicabs by drivers while carrying passengers, § 46-84

State law reference- Fire Prevention Act, MCL § 29.1a et seq., MSA § 4.559(1) et seq.

Sec. 17-17. Establishment and duties of bureau of fire prevention.

(a) The Fire Prevention Code shall be enforced by the bureau of fire prevention in the division of fire of the city which is hereby established and which shall be operated under the supervision of the chief of the division of fire.

(b) The fire marshal in charge of the bureau of fire prevention shall be appointed by the city manager on the basis of examination to determine his qualifications. His appointment shall continue during good behavior and satisfactory service and he shall not be removed from office except for cause after public trial.

(c) The chief of the division of fire may detail such members of the division of fire as inspectors as shall from time to time be necessary. The chief of the division of fire shall recommend to the city manager the employment of technical inspectors who, when such authorization is mad, shall be selected through an examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the division of fire, and appointments made after examination shall be for an indefinite term with removal for cause.

(d) A report of the bureau of fire prevention shall be made annually and transmitted to the chief executive officer of the municipality; it shall contain all proceedings under this code, with such statistics as the chief of the division of fire may wish to include therein; the chief of the division of fire, shall also recommend any amendments to the code which in his judgment, shall be desirable. (Ord. of 7-8-68, § 2; Code 1972, § 9.282)

Cross reference-Fire department, § 2-44 et seq.

Sec. 17-18. Fees for permits.

Any person desiring or requiring a permit shall pay, at the time of filing, a fee as required by this section.

- (1) Permit issuance, first permit.....\$10.00

(2) Each supplemental permit..... 3.00
(Ord. No. 624-89, § 2,4-24-89)

Editor's note-Ord. No. 624-89, § 3, adopted Apr. 24, 1989, in part repealed § 17-18, which pertained to definitions relative to the fire prevention code and derived from § 3 of an ordinance adopted July 8, 1968 and § 9.283 of the city's 1972 Code. Section 2 of Ord. No. 624-89 enacted new provisions which have been included to read as set out in §17.18 at the discretion of the editor.

Secs. 17-19 – 17-21. Reserved

Editor's note-Ord. No. 624-89, § 3, adopted Apr. 24, 1989, in part repealed §§ 17-19 – 17-21, which pertained to limits of districts in which storage of flammable materials was restricted and derived from §§ 4-6 of an ordinance adopted July 8, 1968, and §§ 9.284-9.287 of the city's 1972 Code.

Secs. 17-22 Amendments to the fire prevention code; establishment of limits for the storage of explosives, etc.

(a) The BOCA National Fire Prevention Code is amended and changed in the following respects:

Section F-100.1 (page 1, second line). Insert: "City of Benton Harbor."

(b) The limits referred to in Section F-2601.2 of the BOCA national Fire Prevention Code in which the storage of explosives, ammunition and blasting agents is prohibited are hereby established as within the legally defined boundaries of the City of Benton Harbor. (Ord. No. 624-89, § 4, 4-24-89; Ord. of 8-27-90, §§ 2,3,4,8-27-90)

Sec. 17-23. Modifications.

The fire marshal shall have the power to modify any of the provisions of the Fire Prevention Code upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the fire marshal thereon shall be entered upon the records of the division of fire and a signed copy shall be furnished the applicant. (Ord. of 7-8-68, § 8; Code 1972, § 9.289)

Sec. 17-24. Appeals.

Whenever the chief of the division of fire shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief of the division of fire to the board of building trades appeals within thirty (30) days from the date of the decision appealed. (Or. Of 7-8-68, § 9; Code 1972, §9.290)

Cross reference- Board of building trades appeals, § 11-16 et seq.

Sec. 17-25. New materials, processes or occupancies which may require permits.

The city manager, the chief of the division of fire and the fire marshal shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies, which shall require permits, in addition to those now enumerated in the code. The fire marshal shall post such list in a conspicuous place in his office, and distribute copies thereof to interested persons. (Ord. of 7-8-68, § 10; Code 1972, § 9.291)

Sec. 17-26. Penalty for violations.

Any person violating any provision of this article shall be subject to the penalties of section 1-8, except that there shall be a minimum fine of twenty-five dollars (\$25.00) for each violation. (Ord. of 7-8-68, § 11; Code 1972, § 9.292)

Sec. 17-27. Smoke detector requirements for dwelling units.

(a) *General requirement, penalty for violation.* It shall be the responsibility of the owner and/or occupant of each new and existing occupied dwelling unit to install smoke detectors in each such dwelling unit as hereinafter provided. Said smoke detectors shall be capable of sensing visible or invisible particles of combustion and providing a suitable audible alarm thereof; further, they shall be installed within ninety (90) days of the effective date of this Ordinance Number 526-84, in the manner hereinafter provided. Failure to install smoke detectors as and where required by said date and failure to maintain said smoke detectors in an operable condition, including batteries where necessary, is a misdemeanor, punishable by a maximum penalty of ninety (90) days in jail and/or five hundred dollars (\$500.00) fine.

(b) *Location.* At least one smoke detector shall be installed to protect each sleeping area. A sleeping area is defined as the area or areas of the family living unit in which the bedrooms (or sleeping rooms) are located. Where bedrooms or rooms ordinarily used for sleeping are separated by other use areas (such as kitchens or living rooms, but not bathrooms or closets), they shall be considered as separate sleeping areas for the purposes of this section. At least one smoke detector shall be installed in or near each stairway leading up to an occupied area in such a manner as to assure that rising smoke is not obstructed in reaching the detector and the detector intercepts rising smoke before it reaches the occupied area.

(c) *Alternative.* As an alternative to self-contained smoke detectors, an approved fire detection system may be installed. Each fire detection system must be individually approved and a permit issued therefor by the department of fire.

(d) *Equipment.* All devices, combinations of devices, and equipment required herein are to be installed in conformance with the building code and this section, and approved by the Benton Harbor Fire Services and listed by said department for the purposes for which they are intended; said list may be subsequently amended by the department of fire as necessary. Such approval shall be permanent unless the director subsequently finds that the equipment is hazardous or unreliable, in which case, the director may suspend or revoke approval. The director may in any such case determine whether replacement of existing installation shall be required. Transfer to the inactive list shall not affect equipment approval.

(e) *Installation.* In new residential dwellings, smoke detectors shall be wired directly (hard-wired) to the building's power supply. In existing dwellings it is preferred that smoke detectors be wired directly to the power supply, however, said detectors may be powered by self-monitored battery or operated in a plug-in outlet which is fitted with a plug retrained device provided the outlet is not controlled by any switch other than the main power supply.

(f) *Certification at change in occupancy.* After the effective date of this Ordinance Number 526-84, at every change of occupancy of every dwelling unit occasioned by or incidental to a sale, lease or sub-lease of said unit, it shall be the duty of the grantor thereof (i.e., the seller, lessor or sub-lessor, as the case may be) to provide, before occupancy, to the new occupant that all smoke detectors as required by this section are installed and in proper working condition. Failure to comply with this subsection shall be punishable as a misdemeanor as set forth in subsection 17-27(a) hereof.

(g) *Permits.* No smoke detector or alternative system shall be directly connected (permanently wired) to the electric system of the structure unless an electrical permit shall have first been obtained. (Ord. No. 526-84, §§ 1-7, 3-12-84)

Secs. 17-28 – 17-37/ Reserved.

ARTICLE III. FIREWORKS*

Sec. 17-38. Scope.

(a) This article shall apply to the regulation and control of the manufacture, sale, discharge, storage and possession of fireworks as hereinafter defined, within the city, except as provided by the provisions of subsection (b).

(b) Nothing in this article shall be construed to prohibit any resident wholesaler, dealer, or jobber to see at wholesale such fireworks as are not herein prohibited; or the sale of any kind of fireworks provided the same are to be shipped directly out of state, in accordance with the department of transportation (DOT) regulations covering the transportation of explosives and other dangerous articles by motor, rail, and water; or the use of fireworks by railroads or other transportation agencies for signal purposes of illumination, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations, or use of fireworks for agricultural purposes under conditions approved by the chief of the bureau of fire prevention. Such wholesalers, dealers and jobbers shall store their supplies of fireworks in accordance with the provisions of Article 12 of the Fire Prevention Code as adopted by section 17040 as amended.

(Ord. of 5-1-78, § 1.1)

Sec. 17-39. Defined.

The term “fireworks” shall mean and include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, Daygo bombs, sparklers, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except that the term “fireworks” shall not include model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable aero models and shall not include toy pistols, toy canes, toy guns or other devices in which paper and/or plastic caps containing not in excess of an average of twenty-five hundredths of a grain of explosive content per cap manufactured in accordance with the United States Department of Transportation Regulations for packing and shipping of toy paper and/or plastic caps are used and toy paper and/or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all time. Each sale shall be labeled to indicate the maximum explosive content per cap. (Ord. of 5-1-78, § 1.2)

Cross reference- Definitions and rules of construction generally, § 1.2.

Sec. 17-40. Manufacture, sale, storage and discharge.

(a) The manufacture and storage of fireworks is prohibited within the municipal boundaries of the city except as follows:

(1) A permit shall be obtained from the chief of the bureau of fire prevention for the manufacture and storage of fireworks. The chief of the bureau of fire prevention may restrict the quantity of fireworks that can be manufactured or stored.

(2) The manufacture, transportation and storage of fireworks shall be reasonably safe to persons and property on matters not detailed in this article, conformance with the standards set forth in the National Fire Protection Association’s No. 44A, Code for the manufacture, Transportation and Storage of Fireworks, Shall be evidence that such manufacture, transportation, and storage is reasonably safe to persons and property.

(b) It shall be unlawful for any person to store, to offer for sale, expose for sale, sell at retail, or use or explode any fireworks except as provided in subsections (c)-(f).

(c) The chief of the bureau of fire prevention may adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or group of individuals. Such permits can be granted upon application to the chief of the bureau of fire prevention and after approval of the chief of police and the coordinator of buildings and inspections, or the superintendent of public works under the filing of a bond by the applicant as provided in section 17-41. Every such display shall be handled by a competent operator approved by the chief of the bureau

of fire prevention and the chief of police and shall be of such composition, character, and so located, discharged or fired as in the opinion of the chief of the bureau of fire prevention and the coordinator of buildings and inspections, or the superintendent of public works, after proper inspection, and of the chief of police, shall not be hazardous to property or endanger any person or persons.

(d) Application for permits shall be made in writing at least thirty (30) days in advance of the date of the display. After such privilege has been granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

(e) The sale, possession, use and distribution of fireworks for display purposes shall be conducted so as to be reasonably safe to persons and property. The sale, possession, use and distribution of fireworks conforming to the provisions of this article shall be deemed to be reasonably safe to persons and property; on matters not detailed in this article, the sale, possession, use and distribution of fireworks for display purposes conducted in accordance with the applicable standard set forth in the National Fire Protection Association's No. 494L, Model State Fireworks Law, shall be evidenced that such sale, possession, use and distribution of fireworks for display purposes provide reasonable safety to persons and property.

(f) The chief of the bureau of fire prevention may adopt reasonable rules and regulations for the use of model rockets. The design, construction and use of model rockets shall be reasonably safe to persons and property. The design, construction and use of model rockets conforming to the provisions of this article and the Fire Prevention Code, shall be deemed to be reasonably safe to persons and property; on matters not detailed in this article or the Fire Prevention Code, the design, construction and use of model rockets is in accordance with the applicable standard set forth in the National Fire Protection Association's No. 41L, Code for Model rocketry, shall be evidence that such design, construction and use provides reasonable safety to persons and property.

(g) Notwithstanding the provisions of subsections (a) and (b), the chief of the bureau of fire prevention and the chief of police, may adopt reasonable rules and regulations for the allowance of the storage, sale, offer for sale, exposure for sale, sale at retail, or use or explosion of fireworks, of a class, type, and explosive content, at specific times and places to be designated, provided that the spirit of this article shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the fire marshal thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant and filed in the office of the city clerk. (Ord. Of 5-1-78, §1.3)

Sec. 17-41. Bond and responsibility for display required.

(a) The chief of the bureau of fire prevention shall require a bond from the permittee in a sum not less than one thousand dollars (\$1,000.00) conditioned on compliance with the provisions of this article.

(b) Before any permit for a pyrotechnic display shall be issued, the person making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person or any agent or employee thereof, in such amount, character, and form as the chief of the bureau of fire prevention determines to be necessary for the protection of the public. (Ord. of 5-1-78, §1.4)

Sec. 17-42. Disposal of unfired fireworks.

Any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the particular type of fireworks remaining. (Ord. of 5-1-78, § 1.5)

Sec. 17-43. Seizure of fireworks

The chief of the bureau of fire prevention, the chief of police, the coordinator of buildings and inspections, the superintendent of public works, or their designees, shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored, or held in violation of this article, and may initiate prosecution of the violator. (Ord. of 5-1-78, § 1.6)

Sec. 17-44. Appeals.

Whenever the chief of the division of fire shall disapprove an application or refuse to grant a permit for or when it is claimed that the provisions of this article do not apply or that the true intent and meaning of this article have

been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief of the fire department to the board of building trades appeals within thirty (30) days from the date of the decision appealed. (Ord. of 5-1-78, § 1.7)

Sec. 17-45. New materials, processes or occupancies which may require permits.

The city manager, the chief of the division of fire and the fire marshal shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies, which shall require permits, in addition to those now enumerated in this article. The fire marshal shall post such list in a conspicuous place in his office, and distribute copies thereof to interested person. (Ord. of 5-1-78, § 1.8)

Sec. 17-46. Penalty for violations.

(a) Every person convicted of a violation of any provision of this article, or any rule or regulation adopted or issued pursuant thereof, shall be punished by a minimum fine of twenty-five dollars (\$25.00). The imposition of one penalty for any violation shall not excuse the violation or permit it continue; each day that prohibited conditions are maintained shall constitute a separate offense.

(b) The application of the above penalty shall not be held to prevent the enforced removal or confiscation of prohibited conditions or items. (Ord. of 5-1-78, § 1.9)

ARTICLE IV. IMPLEMENTATION OF A PROGRAM TO RECOVER COSTS.

Sec. 17-47. Purpose

To establish and implement a program to recover cost associated with the delivering of public safety and emergency services by the City of Benton Harbor including, but not limited to; motor vehicle, fire, rescue, hazardous materials, utilities, false alarms and/or any other incident, accident and/or event in which life, property and/or public safety are, or may be, at risk.

Sec. 17-48. Cost Recovery

The City of Benton Harbor's Public Safety Department shall initiate a cost recovery program for the delivery of public safety services, including, but not limited to, personnel, supplies and equipment. The rates imposed for cost recovery shall be that which is the usual, customary and reasonable costs (UCR), which includes any and all services, personnel, supplies and equipment and may vary based on the actual costs of the individual event.

Sec. 17-49. Rate

The cost recovery rate shall be charged to the responsible or "at-fault" person, initially filed to their insurance carrier, representing an add-on-cost of the claim for negligent acts, damages of vehicles, property and/or injuries. The claim costs shall be filed to the insurance company, the owner of a vehicle, owner of property, or other responsible parties.

Sec. 17-50. Review

The City Manager and/or Finance Director may make rules or regulations, and from time-to-time may amend and/or make modifications , relating to this ordinance as they may deem necessary or expedient in respect to billing for cost recovery or the collection thereof.

Sec. 17-51. Collection

All amounts collected as a result of this Ordinance shall be placed into a fund as established by the Finance Director to be used exclusively for personnel, supplies and equipment for the Public Safety Departments.